MULTIMEDIA UNIVERSITY

STUDENT ID NO

MULTIMEDIA UNIVERSITY

FINAL EXAMINATION

TRIMESTER 2, 2019 / 2020

UIS4612 – LAW OF INSOLVENCY

(All Sections / Groups)

4 MARCH 2020

Reading Time: 2.30 p.m. – 2.45 p.m.
(15 Minutes)
Answering Time: 2.45 p.m. – 5.45 p.m.
(3 Hours)

INSTRUCTIONS TO STUDENT

1. Students will have **fifteen minutes** during which they may read the paper and make rough notes ONLY in their question paper. Students then have the remaining **THREE HOURS** in which to answer the questions.

2. This Question paper consists of 4 pages with 4 Questions only.

3. Attempt FOUR questions. All questions carry equal marks and the distribution of the marks for each question is given.

4. Students are only allowed to bring in CLEAN AND ORIGINAL COPIES of (i) Insolvency Act 1967; (ii) Insolvency Rules 2017; (iii) Insolvency Voluntary Arrangement Rules 2017; (iv) Companies Act 2016; (v) Companies (Winding-up Rules 1972 (incorporating latest amendments); (vi) Companies (Corporate Rescue Mechanism) Rules 2018 and (vii) Rules of Court 2012 into the exam venue. "Clean" is defined to include no tagging, no annotation either by the publisher or anyone else, and no erased marking. Highlighting and underlining are also prohibited.

5. Please write all your answers in the Answer Booklet provided.

QUESTION 1

On 1.2.2019, Pluto obtained judgment against Bruno in the Sessions Court at Melaka for a sum of RM250,000-00 with interest at 5% per annum from the date of judgement to date of realisation and costs of RM5,000-00.

After three months, Pluto demanded from Bruno payment of the full sum under the said judgement. After numerous demands from Pluto, Bruno paid a sum of RM100,000-00 towards the judgement sum. Pluto accepted the sum of RM100,00-00 as part payment of the judgement sum although he was not happy with the sum paid by Bruno.

On 30.5.2019, Pluto served a bankruptcy notice on Bruno. The bankruptcy notice stated that Bruno must pay Pluto the sum of RM150,000-00 with interest at 5% per annum from the date of judgment to date of realisation and costs of RM5,000-00 within five days after the service of the bankruptcy notice on Bruno.

Bruno received the bankruptcy notice but he ignored the said bankruptcy notice.

On 15.1.2020, Pluto served on Bruno a creditor's petition together with a supporting affidavit. Pluto's creditor's petition was dated 15.10.2019. Pluto's affidavit in support of the creditor's petition was dated 13.10.2019. The creditor's petition was attested by a Solicitor from Tawau, Sabah.

The creditor's petition is fixed for hearing next month.

Bruno knows that you are an experienced bankruptcy lawyer and he seeks your advice whether he has grounds to oppose the bankruptcy notice and creditor's petition and if so, the procedure to oppose the creditor's petition.

What would be your answer if Bruno comes to meet you and informs you that he has a counterclaim against Pluto for the sum of RM85,000-00 and that he intends to oppose the creditor's petition by filing an affidavit.

Discuss your advice to Bruno.

(Total: 25 marks)

QUESTION 2

On 15.7.2019, Autoparts Sdn. Bhd. ('ASB') supplied auto parts worth RM1 million on 3 months' credit terms, to Roadstar Sdn. Bhd. ('RSB'). However, as RSB failed to pay within the stipulated period, ASB issued a notice of demand dated 16.12.2019, demanding payment of RM1 million within 14 days of the date thereof. The notice was handed personally to George, the manager of RSB the same day. RSB failed to pay within the specified period.

Continued...

On 10.1.2020, ASB presented a winding up petition under section 465(1)(e) of the Companies Act 2016 on the grounds that the RSB was unable to pay its debts. An affidavit verifying the petition was filed together with the petition. The said petition was served on both RSB's solicitors, M/S H & S Advocates & Solicitors and also at RSB's place of business.

The petition is fixed for hearing on 15.4.2020.

RSB wish to set aside the winding-up petition on the grounds that they have land in Singapore worth RM3 million, which, if realised would enable them to pay the debt. Furthermore, they are also pursuing legal action against certain debtors in Malaysia who owe them money amounting to RM500,000-00. RSB also dispute the amount of the debt owing as some of the deliveries valued at about RM200,000-00 were substandard and had to be returned.

RSB approach you to set aside the Creditor's Petition and obtain an extension of time to realise their assets to settle the balance due to ASB.

Advise RSB on the viability of setting aside the Creditor's Petition and the best course of action to pursue in the circumstances.

(Total: 25 marks)

QUESTION 3

Dr. Khoo is a well-known archaeologist in Malaysia. In order for him to further study human history by examining artefacts, which range from prehistoric tools and buildings to animal bones and tiny organisms, he needs funding to continue his research. He decided to set up a company called Khoo Archaeology Sdn. Bhd. ('KASB') with a few shareholders. KASB borrowed RM5 million from Bank Kaya Bhd. ('BKB'), and Dr. Mars, the Managing Director of KASB, stood as guarantor for the loan.

The research on fossil footprints was very successful and KASB made good money. However, Dr. Khoo neglected to pay BKB the monthly instalments on the loan although KASB had RM2 million in cash and a few immovable properties worth RM3.5 million.

When BKB demanded payment of the outstanding sum of RM2.5 million from KASB, KASB argued that only RM2 million was due and that BKB's calculation of interest was erroneous.

Whilst negotiations between KASB and BKB on the calculation of interest were on-going, BKB issued a statutory demand on KASB on 15.1.2020 for the outstanding

Continued...

sum of RM2.5 million without the knowledge of Dr. Khoo and KASB. On 15.2.2020, a winding-up petition was presented against KASB. The verifying affidavit was also dated 15.2.2020.

BKB then sued and entered Judgement in Default against Dr. Khoo and Dr. Mars for the outstanding sum of RM2.5 million and then commenced bankruptcy proceedings. To oppose the Bankruptcy Petition, Dr. Khoo wrote a letter to Court to explain that he was disputing the debt alleged to be due to BKB while Dr. Mars argued that he was a social guarantor in this case. The Court nevertheless granted a Bankruptcy Order against both Dr. Khoo and Dr. Mars. In the meantime, BKB also commenced winding-up proceedings against KASB.

In order not to affect the operation business of KASB, the other shareholders of KASB then met at a shareholders' meeting and decided to raise the money needed to pay off the Judgment sum entered against Dr. Khoo, Dr. Mars and KASB, but each of the shareholders needed time to do so.

Analyse the following:

(i) How to oppose the winding-up petition by KASB?

(12 marks)

(ii) How should Dr. Khoo and Dr. Mars have opposed the bankruptcy?

(8 marks)

(iii) Advise whether BKB can accept any payment from the other shareholders of KASB to settle the debt on behalf of Dr. Khoo, Dr. Mars and KASB?

(5 marks)

(Total: 25 marks)

Answer EITHER Question 4 (a) OR Question 4 (b)

QUESTION 4 (a)

Sunshine Sdn. Bhd. ('SSB') is a housing developer that has charged all that piece of land described as Taman Suria ('the said land') to Asean Bank Bhd. ('ABB') as security for a loan of RM15 million. ABB obtained a winding up order against SSB as it was unable to service its loan. The said land is due to be sold by public auction on the 10.2.2020. Many of the purchasers of the Taman Suria housing project have paid up to 80% of the purchase price and have no confidence in recovering their payments in the winding-up as they are unsecured creditors. They approach the Liquidator to try and get another contractor to complete the project and deliver vacant possession. A few days before the auction date

Continued...

of the said land, the Liquidator accepted an offer from Dana Builders Sdn. Bhd. ('DBSB') to settle the outstanding sum of RM15 million due to ABB. It was agreed that upon settlement of the outstanding sum to ABB, DBSB would complete the Taman Suria housing project for the purpose of settling the purchasers claims and/or interests. However, the other secured and unsecured creditors object to this arrangement and alleged that the proposed sale of the land to DBSB and settlement of the debt to ABB amounted to an undue preference. They intend to apply for an injunction to prevent the sale as well as seek the removal of the Liquidator.

Discuss with reference to the Companies Act 2016 and relevant cases the powers and duties of the Liquidator and under what circumstances a Liquidator may be removed.

(Total: 25 marks)

OR

QUESTION 4 (b)

Breadbasket Sdn. Bhd. ('BSB') has been a leading bread manufacturer in Malaysia since 1957. Two (2) years ago, the Board of Directors decided to expand and diversify their products to include special bread making ovens and other related products. However, since then, BSB has been facing financial problems. The Board of Directors are now divided in the direction in which to proceed and there is disagreement amongst them. Two (2) of the directors Sah Too and Tu Ah who are also the majority shareholders propose a resolution to wind up BSB. Min Too who is also a director and a minority shareholder is opposed to the members voluntary winding up of BSB. Min Too is of the opinion that BSB's present financial problems are the result of mismanagement by Sah Too and Tu Ah which can be corrected.

Advise Min Too on the winding up of BSB and the course of action that he could pursue.

(Total: 25 marks)

End of Page